



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 23 जून, 2021 / 2 आषाढ़, 1943

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 9th April, 2021

No. Shram(A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	104/20	Hardeep Singh	M.D. M/s Asterisk Health Care	04-01-2021
2.	480/16	Ram Singh	D.F.O. Dehra & Hamirpur	05-01-2021
3.	109/20	Vijay Rana	M.D. M/s Midas Care Pharmaceuticals	06-01-2021
4.	436/15	Madan Lal	M.D. HP State Forest Divn. Corp.	11-01-2021
5.	85/17	Jeet Singh	D.F.O. Nurpur	12-01-2021
6.	43/17	Leela Devi	E.E. HPPWD	15-01-2021
7.	501/16	Suresh Kumar	E.E. HPPWD, Nurpur & other	16-01-2021
8.	765/16	Kishori Lal	E.E. HPPWD, Nurpur & other	18-01-2021
9.	130/19	Sunil Kumar	M/s Kailash Print Media Pvt. Ltd.	20-01-2021
10.	868/16	Sham Lal	E.E. HPPWD, Nurpur & others	20-01-2021

By order,

KAMLESH KUMAR PANT, IAS
Principal Secretary (Lab. & Emp.) .

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 104/2020

Date of Institution : 19-11-2020

Date of Decision : 04-01-2021

Shri Hardeep Singh s/o Shri Kamal Kishore, r/o VPO Bathu, Tehsil Haroli, District Una,
H.P.Petitioner.

Versus

The Managing Director/Employer, M/s Asterisk Healthcare, V.P.O. Bathri, Tehsil Haroli,
District Una, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For Respondent : Sh. Ankur Soni, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Hardeep Singh s/o Shri Kamal Kishore, r/o V.P.O. Bathu, Tehsil Haroli, District Una, H.P. w.e.f. 23-08-2020 by the Managing Director/Employer, M/s Asterisk Healthcare, V.P.O. Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained ex parte.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A.”.

4. Sub-section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass ex parte award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 23-08-2020 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2021.

Seal

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 480/2016

Date of Institution : 22-08-2016

Date of Decision : 05-01-2021

Shri Ram Singh s/o Shri Rattan Singh, r/o Village & Post Office Bhatoli Pokrian, Tehsil Dehra, District Kangra, H.P.Petitioner.

Versus

1. The Divisional Forest Officer, Wildlife Division Hamirpur, District Hamirpur, H.P.
2. The Divisional Forest Officer, Dehra Forest Division, Dehra, District Kangra, H.P.
....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent(s) : Sh. Gaurav Keshav, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Ram Singh s/o Shri Rattan Singh, r/o V.P.O. Bhatoli Pokrian, Tehsil Dehra, District Kangra, H.P. during year, 1987 to year, 2002 by (i) the Divisional Forest Officer, Wildlife Division Hamirpur, District Hamirpur, H.P. (ii) the Divisional Forest Officer, Dehra Forest Division, Dehra, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent as a daily waged forest worker on muster roll in the year 1987. He had worked as such under respondent No. 2 until September 2002. His services had been engaged and disengaged by respondent No. 2 without giving him any written order. Fictional breaks were given to him so that he could not complete 240 days or more for the purpose of continuous service as required under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). He was also not paid one month’s pay in lieu of the notice period, as well as retrenchment compensation. His services were finally terminated by respondent No. 2 in the month of September, 2002. He has raised demand notice before the Labour-cum-Conciliation Officer, Dharamshala, but without success. The earlier reference bearing Reference No. 176/2007 had been decided on 15.5.2010 by this Tribunal in his favour. His services had been reinstated by the respondents *vide* letter No. 417 dated 6.12.2010 and that he had worked continuously under respondent No. 1 till attaining the age of his retirement. Thereafter, he had raised demand notice regarding his time to time termination *i.e.* from the year 1987 until September, 2002, but of no avail. Persons junior to him, namely, S/Sh. Kishori Lal, Godhu Ram, Ranjeet Singh, Krishan Chand, Niazi Ram, Mehtab Singh, Suhash Chand, Madan Lal, Jeevan Parkash, Mohinder Singh and Jagir Singh were retained regularly, without any breaks. The respondents had violated the provisions of Section 25-G of the Act. New/fresh hands were also engaged by the department at the time of giving him fictional breaks and their services have been regularized. The respondent cannot claim that work and funds were not available with the department. The services of the petitioner were illegally, arbitrarily and unconstitutionally terminated from time to time from the year 1987 until September, 2002, which are against the mandatory provisions of the Act. Hence, the petition.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner was engaged as a daily waged worker in the month of January, 1987 by respondent No. 2 and that he had completed more than 240 days in the years 1994, 1997 and 1998. The petitioner was an intermittent worker and had worked under respondent No. 2 until September, 2002. Thereafter, he had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. He has not fulfilled the criteria of continuous service as required under Section 25-B of the Act. There was no need to serve any notice to him under Section 25-F of the Act. The petitioner was not finally terminated by the respondents. His services were reinstated by respondent

No. 2. He was engaged as a daily waged casual worker for the purpose of performing various seasonal and casual forestry works. Persons mentioned in para No. 5 of the statement of claim had been working continuously and their services have been regularized as per the government policy. No fictional breaks were given to the petitioner during the year 1987 upto September, 2002. The petitioner was gainfully employed, being an agriculturist. Hence, it was prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 25-05-2018:

1. Whether time to time termination of services of the petitioner by the respondents during year, 1987 to year, 2002 is/was illegal and unjustified as alleged? ...OPP

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP

3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR

4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ram Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of

his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex.PW1/N.

In the cross-examination, he admitted that seasonal work is done in the department. He also admitted that he was engaged by respondent No. 2 on daily wage basis. He denied that he had not worked for 240 days or more in all the years. Further, he denied that he was not removed by the department. He specifically denied that he had left the job of his own accord. He admitted that the persons named by him in the statement of claim, had been working regularly. He denied that the department had not given him any breaks. He owns land, which he cultivates. He denied that no junior to him has been kept by the department. He clearly admitted that he had earlier filed a claim regarding his disengagement, which was decided on 15-5-2010. He feigned ignorance that in the earlier reference he had not raked up the plea of fictional breaks. However, he admitted that as per the Award dated 15.5.2010, he has been kept at work by the department.

11. Conversely, Shri R.K. Dogra, Divisional Forest Officer, Dehra (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that earlier a case had been filed by the petitioner regarding his disengagement, which was decided on 15-5-2010. He also admitted that after the decision the petitioner was re-engaged in Baldoa Nursery. Further, he admitted that as per the orders the seniority and continuity of service of the petitioner was to be maintained, except for back wages. He clearly admitted that on the basis of seniority the petitioner had completed ten years of service on 31.12.1996 and he was entitled for regularization as per the policy of the government from 1.1.1997.

12. Ex. RW1/B is the copy of mandays chart pertaining to Shri Saroop Singh and others.

13. Ex. RW1/C is the copy of information regarding regularization of daily waged/ contingent paid workers relating to Shri Amar Chand and others.

14. Ex. RW1/D is the copy of statement showing the detail of daily wagers who have completed seven years of continuous service as daily wagers with minimum 240 days in each calendar year as on 31.3.2014 relating to Shri Sarvan Kumar and others.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. PW1/H unfolds that the petitioner was initially employed in the month of January, 1987 by respondent No. 2. The defence of the respondents is two folds, one that the petitioner was engaged for seasonal work and the other that he had never been disengaged, but had abandoned the job of his free will and volition.

16. The plea of the respondents that the petitioner had been employed for seasonal works is not sustainable for the reason that in the earlier Award passed by this Tribunal in Reference No.176/2007, copy of which is placed on record as Ex. PW1/F, such plea taken by the respondents was negated. Needless to say such findings have attained finality. Even otherwise, the respondents have not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and work. Moreover, the mandays chart Ex.PW1/H reveals that in the years 1994, 1995, 1997 and 1998 the petitioner had worked for 260 days, 252 days, 299 days and 285 days respectively with the respondents/department. A person working for more than 240 days in a year cannot be termed as a seasonal worker. Then, it is nowhere the plea taken by the respondents nor there is any iota of evidence on record to show that the forest department has been declared as a seasonal industry, as required under the law. So, this

assertion of the respondents being devoid of any merit deserves dismissal and is accordingly rejected.

17. As regards the second count on which the respondents have contested the claim is that the petitioner himself had abandoned the job. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondents. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri R.K. Dogra, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employers is not established. Moreover, plea of abandonment taken by respondent No. 2 in the earlier case (Ex.PW1/F) was held to be not a probable one.

18. Now, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondents as alleged?

19. A mere glance at the mandays chart of the petitioner produced on record by him as Ex.PW1/H undoubtedly shows that the petitioner had been working for a good number of days in each year. For about four years he had completed more than 240 days in each year. Apparently, he had not been given fictional breaks during these years. Then, if intentional breaks in service were being provided to the petitioner by the respondents time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? So, he cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondents/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for about fourteen years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. Then, if it was really so that the services of the petitioner were being terminated from time to time by the respondents/department, as alleged, he ought to have specifically pleaded and pressed such plea in the earlier claim filed by him. So is not the case here, as a perusal of the earlier Award (Ex. PW1/F) would reveal that neither any reference had been received from the appropriate government regarding the alleged fictional breaks in service of the petitioner by the respondents/department, nor any such issue was framed or pressed for by the petitioner. To my mind, the assertion of the petitioner regarding fictional breaks is, thus, ill founded and cannot be believed to be correct. No artificial/fictional breaks were given to the petitioner by the respondents during the course of his employment.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner during the year 1987 to the year 2002 by the respondents/department. He is not entitled to any relief.

21. Issues no. 1 and 2 are accordingly answered in the negative and decided against the petitioner.

ISSUE No. 3:

22. Taking into account my findings on issues No. 1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is answered in the affirmative and in favour of the respondents.

ISSUE NO. 4:

24. Not pressed.

RELIEF

25. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 109/2020

Date of Institution : 21-11-2020

Date of Decision: 06-01-2021

Shri Vijay Rana, Secretary, Midas Care Workers Union, VPO Bathu, Tehsil Haroli, District Una, H.P.Petitioner.

Versus

The Managing Director/Employer, M/s Midas Care Pharmaceuticals Private Limited, Industrial Area Bathri, Tehsil Haroli, District Una, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : None for the petitioner

For Respondent : Sh. Virender Sharma, Manager (HR)

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the miscellaneous demands raised by Shri Vijay Rana, Secretary, Midas Care Workers Union, V.P.O. Bathu, Tehsil Haroli, District Una, H.P. *vide* demand notice dated 19-03-2020 (copy enclosed) to be fulfilled by the Managing Director/Employer, M/s Midas Care Pharmaceuticals Private Limited, Industrial Area Bathri, Tehsil Haroli, District Una, H.P., are legal and justified? If yes, what relief, service benefits and compensation the above workers are entitled to from the above mentioned management/employer?”

2. The case was listed for appearance of the petitioner being Secretary of Midas Care Workers Union, V.P.O. Bathu, Tehsil Haroli, District Una, H.P. through whom a demand notice was filed for today but, however, neither he nor anyone else had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to

attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass ex parte award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the miscellaneous demands as raised in the demand notice dated 19.03.2020 being legal and justified, were not fulfilled by the respondent/employer. However, there is neither any pleading nor any evidence to this effect on record on the part of the Midas Care Workers Union, being represented through its Secretary, Shri Vijay Rana. At the risk of repetition, Shri Vijay Rana, Secretary Midas Care Workers Union had not put in appearance before this Tribunal. In this view of the matter, the Midas Care Workers Union, V.P.O. Bathu, Tehsil Haroli, District Una, H.P. is not entitled to any relief, being in the form of miscellaneous demands raised vide demand notice dated 19.03.2020. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after completion be consigned to the Record Room.

Announced in the open Court today this 6th day of January, 2021.

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 436/2015

Date of Institution : 13-2-2014

Date of Decision : 11-01-2021

Shri Madan Lal s/o Shri Gorkhu Ram & other 18 Workers (as per list enclosed) c/o Shri Sunder Singh Sippy, House No.100/3, Roura Sector-2, District Bilaspur, H.P.Petitioners.

Versus

1. The Managing Director, H.P. State Forest Development Corporation Ltd., Shimla, H.P.
2. The General Manager, Rosin & Turpentine Factory, District Bilaspur, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. S.S. Sippy, AR

For the respondent(s) : Sh. Vijay Mehra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demands raised by Sh. Madan Lal s/o Sh. Gorkhu Ram and others 18 workers (as per list enclosed) c/o Sh. Sunder Singh Sippy, House No.100/3, Roura Sector-2, Distt. Bilaspur, H.P. *vide* demand notice dated 26.10.2012 (Copy enclosed) before the (i) The Managing Director, H.P. State Development Corporation Ltd., Shimla, H.P. and (ii) The General Manager, Rosin & Turpentine Factory, Distt. Bilaspur, H.P. are legal and justified? If yes, what relief the above aggrieved workmen are entitled to from the above employers?”

2. In furtherance to the reference it is averred by the petitioners in the statement of claim that they being 19 in number, have been working in the factory of respondent No. 2 for the past ten years through the contractor as daily waged workers. They are being paid the salary by the respondents through the contractor. Their CPF is also being deducted. The resin and turpentine factory is being run by the forest department at Ragunathpura, District Bilaspur since the year 1969. It is registered since then, wherein crude resin is purified and turpentine oil is produced. Earlier, there were two hundred workers in the factory. 125 workers have retired. Now in this factory there are three categories of workers *i.e.* regular, contract based and contract custom. The regular employees are being paid a salary of Rs. 11000/-, the contractual employees a salary of Rs. 6200/- and those based on contract custom @ Rs. 3500/- to 4000/- per month. However, the petitioners are being paid less salary, whereas the workers working on contract and regular basis are being paid higher salaries and they are also being given other facilities *i.e.* leave, uniform, washing allowance, provident fund etc. All the categories of workers are doing the same work and the difference in their salaries amounts to unfair labour practice. No facilities are being provided by the respondents to the workers of contract custom. Seven workers from the Districts of Mandi, Chamba, Kinnaur, Hamirpur and Tehsil Rampur and Karsog have been engaged on compassionate grounds in the factory by the respondents, whereas the legal heirs of the deceased workers have not been engaged. The petitioners were entitled to equal pay for equal work *etc.* Hence, the petition.

3. On notice, the respondents appeared and they filed a joint reply taking preliminary objections regarding lack of maintainability, cause of action and that there was no relationship of employees and employers between the parties. The contents of the petition were denied on merits. It is asserted that during the year 2012-2013, tender for carrying out the work of measurement of drums and putting caps on the drums was allotted to Shri Prem Lal, contractor by the respondents. The tender of resin feeding was allotted to Shri Ranjeet Kumar, contractor and for preparing PGI and TPB drums, the contract was allotted to Shri Mohinder Singh, contractor. The contract for loading and unloading of tins filled with resin was allotted to Shri Chaman Lal, contractor. It was the duty of the contractors concerned to engage labour, as per their convenience, for completing the assigned work within the given time. As per the agreement, the payments were being made to the contractors for the works done. They had only been making the payments to their labour. So, there

was no relationship of employees and employers between the parties. The EPF of the employees was being maintained by the contractors themselves and they were depositing the same with the department concerned. The respondents had only been checking the EPF accounts just to ensure that the contractors had been depositing the EPF of their labour. Since, the employees working on regular and daily waged basis are engaged by the respondents, it becomes their obligation to ensure that the payment of salary/wages was done as per the rules. No payments were ever made by the respondents to the labour engaged by the contractors. As there is no relationship of employees and employers between the parties, the petitioners cannot claim benefits at par with the employees of the respondents working on regular or daily waged basis. The respondents have not indulged in any unfair labour practice and no industrial dispute arises at all. Only the legal heirs of those employees who had died in harness have been provided the employment on compassionate grounds by the respondents. The vacant posts would be filled by the respondents as per the rules. The principle of equal pay for equal work is not applicable in the present case. Hence, it is prayed by the respondents that the claim be dismissed.

4. While filing the rejoinder the petitioners controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 7.1.2015:

1. Whether the demands raised by the petitioner Madan Lal along- with other 18 workers as per their names given in the list, are legal and justified? ...OPP.
2. If issue No. 1 is proved in affirmative to what reliefs the petitioners are entitled to? ...OPP.
3. Whether the petition is not maintainable as alleged in preliminary objections? ...OPR
4. Relief.
6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioners and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Affirmative
Issue No. 4 (Relief)	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. One of the petitioners, namely, Shri Madan Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of the statement of claim. He also filed documents purportedly in support of the claim which are exhibited as Ex. PW1/B to Ex.PW1/B1 and Mark-Y.

In the cross-examination, he denied that he is working with the contractor. Volunteered that, he is working in the factory. However, he had to admit that the payments are being made by the contractor. Self stated that payments were being made through the factory. He further admitted that they all were working under different contractors for different works. He also clearly admitted that no advertisement had been issued for being employed in the department. Further, he admitted that no interview of theirs' was conducted by the department. He categorically admitted that payments were being made by the department to the contractor and that they were being paid by the contractor. He also admitted that they were not being paid the wages at a fixed rate, but only for the amount of work being done by them. He categorically admitted that no muster roll in his favour was issued by the department.

Conversely, Shri Vipan Chand Sharma, Divisional Forest Officer, (HQ) MH WDP, Bilaspur, H.P. (respondent) testified as RW1. In his examination-in-chief he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that the petitioner and 18 workers had worked in the factory. He admitted that Ex. R1-D was issued by the department. He feigned ignorance that under the Factories Act, there is no provision of the contract custom. He denied that they were making the payments directly to the labourers. Self stated that the payments were being made by the contractor through factory head. He admitted that he has not produced any document regarding the payments being made by the contractor.

12. The respondent examined one Shri Sushil Kumar, Divisional Forest Officer, Renukaji, Sirmour at Nahan (respondent) RW2, who proved on record the documents as Ex.RW2/A1 to Ex.RW2/A7, which earlier were marked as Mark-A to Mark-G. In the cross-examination, he stated that Ex.RW2/A1 to Ex.RW2/A7 are the agreements entered into between the department and the contractor(s).

13. Ex.RA-1 is the copy of letter dated 23.8.2014 regarding receiving information under the Right to Information Act, 2005.

14. Ex.R1-B is the copy of manpower position of Rosin and Turpentine Factory, Bilaspur as on 23.8.2014.

15. Ex.R1-C is the copy of letter dated 27.2.2016 regarding receiving information under the Right to Information Act, 2005.

16. Ex.R1D is the copy of EPF detail relating to Shri Madan Lal and eighteen others.

17. Ex.RA is the copy of demand notice issued to the respondents by the petitioners.

18. Ex.RW2/A1 to Ex.RW2/A7 are copies of agreements entered into between the respondents and various contractors.

19. The first question which arises for consideration, as per the arguments, is whether the petitioner along-with other eighteen workers were employees of the respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee

relationship. In **Workmen of Nilgiri Coop. Mktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

20. In the case on hand, it was asserted by the petitioners, being nineteen in number that they were the workmen of respondent No. 2. Respondents denied this fact and claimed that there was no relationship of employer and employees in between the petitioners and the respondents. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioners to prove the employers-employees relationship in between themselves and the respondents. No document has been placed and exhibited on record by the petitioners to show that they were the employees of the respondents. Rather, from the evidence available on record including the statement of Shri Madan Lal, one of the petitioners as PW1, it can be gathered that the petitioners had never been appointed in any capacity at any point of time by the respondents. Shri Madan Lal (PW1) was categorical in his substantive evidence that neither any advertisement had been issued nor any interview of theirs' had been taken by the department. He, further, as per his own admissions was categorical in his cross-examination that they all had been working under different contractors for different works and that the payments were only being made to them by the contractors. He also clearly admitted that they were not being paid the wages at a fixed rate, but were being paid only for the amount of work done by them. It was also clearly admitted by him that no muster roll in his name had ever been issued by the department. In view of these facts, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioners to say that the relationship of employer and employees/workmen existed between the parties.

21. Our own Hon'ble High Court in case titled as **Agya Ram vs. State of H.P., 2016 (sup.) Him.L.R. 2821** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioners nowhere suggested that they were able to prove employer-employee relationship between them and the respondents. No appointment letters issued by the respondents in their favour have been placed on record by the petitioners. The petitioners have also not placed on the file any document to show that they were paid the salaries by the respondents at any point of time. In **Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186**, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioners have failed to discharge the burden cast upon them, as they had failed to lead evidence to show that they were appointed and were being paid the salaries by the respondents, so they cannot be said to be the employees of the respondents.

22. Otherwise too, Section 13 of the Wages Act lays that the appropriate Government may fix the number of hours of work for normal working day etc. in regard to any scheduled employment as detailed in the schedule (part-1) of the said Act. The Minimum Wages (Central) Rules, 1950 postulate that in the case of an adult, nine hours shall constitute a normal working day. There is not even an iota of evidence on the record to show that the petitioners worked for nine hours a day under the respondents/corporation. As already mentioned, Shri Madan Lal (PW1) in his cross-examination admitted that they were not being paid the fixed wages, but were only being paid for the amount of work done by them.

23. Even if, for arguments sake, it is presumed that there exists relationship of employer and employee/workman between the parties, I will like to say that the petitioners have not placed/exhibited on the file any notification issued by the appropriate Government evidencing that minimum rates of wages payable to the employees have been fixed. Section 3 (1-A) of the Wages Act makes it abundantly clear that 'the appropriate Govt. may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment'. The petitioners have not led any evidence to show that one thousand or more employees were engaged by the corporation for doing various works in the factory(s) in the entire State.

24. Such being the situation, I have no hesitation to conclude that the demands raised by the petitioners are unjustified. They are not entitled to any relief.

25. These issues are decided against the petitioners and in favour of the respondents.

ISSUE NO. 3:

26. Taking into account my findings on issues No. 1 and 2 above, it is held that the claim petition is not maintainable in the present form. The petitioners have no locus standi to sue.

27. This issue is decided in favour of the respondents and against the petitioners.

RELIEF :

28. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL)

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 85/2017

Date of Institution : 28-03-2017

Date of Decision : 12-01-2021

Shri Jeet Singh s/o Shri Pradhana Ram, r/o Village Budha, P.O. Nana Jawali, District Kangra, H.P.Petitioner

Versus

The Divisional Forest Officer, Forest Division, Nurpur, District Kangra, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. M.G. Thakur, Adv.

For the Respondent : Sh. Gaurav Keshav, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Jeet Singh s/o Shri Pradhana Ram, r/o Village Budha, P.O. Nana Jawali, District Kangra, H.P. during year, 2001 (as alleged by the workman) by the Divisional Forest Officer, Forest Division Nurpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent as a daily waged workman in the year 1991. He had worked continuously without any breaks under the Forest Range Jawali upto 31st December, 2000. He had completed 240 days in each calendar year. He was not provided any work by the respondent after 19.5.2001. He then had to agitate the matter before the Hon’ble H.P. Administrative Tribunal, Shimla, but the same was returned to be filed before this Tribunal. He thereafter issued demand notice dated 16.6.2008. Work for the whole year or for 240 days was not provided by the respondent. He was only given the work for 4-5 months in a year, which was illegal, unconstitutional and against the principle of natural justice. The respondent had not followed the principle of ‘last come first go’ as persons junior to the petitioner were retained and their services were also regularized by the respondent. New persons were also engaged. Such act of the respondent was arbitrary, unconstitutional and illegal, as the petitioner had to suffer undue financial hardship and mental agony. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged worker in the year 1998 and that he had worked upto 2001 under Forest Range Office Jawali. He had worked for 281 days, 345 days, 266 days and 103 days in the years 1998, 1999, 2000 and 2001 respectively. He thereafter had left the work of his own sweet will and by working intermittently, had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act (hereafter referred to as ‘the Act’ for short). No junior to the petitioner had been retained. Only those persons were regularized, who had fulfilled the terms and conditions of the policy of regularization. The petitioner was gainfully employed as an agriculturist. Hence, it was prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 12.09.2018:

1. Whether termination of services of the petitioner by the respondent during year, 2001 is/was legal and justified as alleged? ...OPP
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ... OPP
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR

Relief.

5. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Not pressed
Issue No. 4	: Negative
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No .1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Jeet Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex.PW1/S.

In the cross-examination, he feigned ignorance that seasonal work is done in the department, which depends upon the availability of work and funds. He earns his livelihood by doing the agricultural chores. He denied that he was engaged as a daily wager in the year 1998 and had worked until the year 2001 in the Range Office. Further, he denied that he was never engaged in the year 1991. He also denied that he had not worked continuously until 31st December, 2000. He admitted that he had not returned back on duty after the year 2001. He denied that he had left

the work of his own sweet will. He admitted that he had not reported for duty in between the years 2001 and 2008. He denied that he had not completed 240 days in the preceding years. Further, he denied that the department had not violated any of the provisions of the Act. He denied that the department had never engaged junior workers to him. He specifically denied that he is making a phoney statement.

11. PW2 Shri Gian Chand produced the requisitioned record. He proved on record the documents as Ex.PW2/A to Ex.PW2/J and Mark-A and Mark-B. In the cross-examination, he admitted that the above mentioned record has not been prepared by him. He also admitted that as per the Beat register there is no entry regarding the work done by the petitioner in the year 1998. He further admitted that as per the range register there is no entry of the petitioner having worked earlier to the year 1998. He specifically admitted that as per both the registers there is no entry after the year 2001.

12. Conversely, Smt. Basu Kaushal, Divisional Forest Officer, Nurpur (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, she corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, she admitted that the old record from the year 1993 upto the year 2005 of Divisional Forest Office, Nurpur has been destroyed, as per Ex.PW2/A. She also admitted that in the month of May, 2001, Jeet Singh had filed a case regarding his removal from service before the H.P. Administrative Tribunal. She further admitted that documents Mark-A and Mark-B were issued by their department. Volunteered that, the record of this period has been weeded out. She admitted Ex.PW1/F to Ex.PW1/J to have been issued by their department. She specifically denied that the petitioner had not left the work of his own sweet will. She was not aware that persons shown at serial no.1 to 5 in Ex.PW2/F had been regularized.

13. Ex. RW1/B is the copy of the month-wise mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of mandays chart of the labourers from the year 2000 upto the year 2016.

15. Ex.RW1/D is the copy of letter dated 12th November, 2010 sent to the petitioner by the Labour Commissioner, Himachal Pradesh regarding demand notice and report under Section 12(4) of the Act.

16. The version of the petitioner is that his services were engaged as a daily waged worker in the year 1991 by the respondent/department. The defence of the respondent is that the services of the petitioner were engaged in the year 1998. However, as per document Mark-A, being the mandays chart of the petitioner and an admitted document on the part of the respondent, the services of the petitioner were initially engaged in the month of March, 1992. The petitioner has not produced any record which shows that his services were engaged in the year 1991, as claimed by him in the statement of claim.

17. The claim of the petitioner is that his services were wrongly and illegally terminated by the respondent in the year 2001. While denying the said fact, the respondent has pleaded that the petitioner had left the job of his own free will and volition.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

19. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid

down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Smt. Basu Kaushal, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days or more in a year preceding twelve calendar months from the date of his alleged termination, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as the conditions precedent as contained in Section 25-F of the Act were not complied with.

21. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2001. From the copy of month-wise mandays of the petitioner, which is there on the file as Mark-A, it becomes abundantly clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment i.e. May, 2001, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The petitioner's allegations that the respondent had violated the provisions of Section 25-G of the Act as well, to my mind, does not appear to have been substantiated. The statement of claim, the petitioner's affidavit Ex.PW1/A as also his cross-examination as PW1 are non-existent in the names of the persons, who being junior to him, were allegedly retained by the respondent after his retrenchment. Then, no seniority list of daily waged category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/ department. Even no co-worker has been examined by the petitioner to substantiate his claim. The bald testimony made by the petitioner (PW1) to the effect that workers junior to him were retained and that their services had been regularized by the respondent cannot be taken as a gospel truth. The material on record, thus, being too scanty and nebulous to lend credence to his allegation that workers junior to him were retained after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-G of the Act.

25. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

26. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

ISSUE NO. 3:

27. Not pressed.

ISSUE No. 4

28. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 43/2017

Date of Institution : 24-1-2017

Date of Decision : 15-01-2021

Smt. Leela Devi w/o Shri Late Shri Balwant Singh, r/o Village Chhid Jajar, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajat Chaudhary, Adv. Vice

For the Respondents : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

Whether alleged termination of the services of Smt. Leela Devi w/o Late Shri Balwant Singh, r/o Village Chhid Jajar, P.O. Guin, Tehsil Sarkaghat, District Mandi, H.P. during September, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 12-05-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that she was engaged as a daily waged worker along-with other workmen in the month of May, 1999 and that she was duly covered under the definition of Sections 2(s) and 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). However, her services were orally terminated on 30.9.1999 by the respondents without giving her notice of retrenchment and compensation in lieu thereof. Persons junior to her, namely, S/Sh./Smt. Roshani Devi, Mamta Devi and Inder Singh were retained in service by the respondents, thereby violating the principle of 'first come last go'. New/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Lekh Raj, Satya Devi had also been appointed by the respondents. She was not given an opportunity of re-employment. 1087 workers were retrenched *w.e.f.* 7.7.2005 and thereafter they had been re-engaged and regularized as per Court orders. The act of the respondents in terminating her services was highly unjustified,

arbitrary, unconstitutional and against the mandatory provisions of the Act. From the date of her disengagement, she is unemployed and is not gainfully employed anywhere. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondents appeared. A joint reply was filed by the respondents taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. However, it is admitted that the petitioner was engaged as a daily waged beldar in the month of May, 1999 and that she had worked as such until the month of September, 1999. She had only worked for 134 days. It was asserted that the petitioner had left the job of her own sweet will, so the question of serving her a notice and salary in lieu thereof does not arise. The workers mentioned in para No. 6 of the statement of claim were engaged on compassionate grounds after obtaining the approval from the government. There is no violation of the provisions of Section 25-G of the Act. Some workers had been re-engaged as per the orders of the Court. No representation had ever been made by the petitioner, except for the demand notice served after about sixteen years in the year 2016. Other allegations denied. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 17.01.2020:

1. Whether the petitioner was illegally and unjustifiably terminated by the respondents during September, 1999, as alleged. If so, its effect? ...OPR.
2. Whether the claim petition is not maintainable, as alleged? ...OPR.
3. Whether the claim petition suffers from the vice of delay and laches, as alleged? ...OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Negative

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. I:

9. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondents in September, 1999 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1999. She had continuously worked until September, 1999. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to her were retained after her disengagement. New/fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

11. It was contended by the learned Deputy District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had been in continuous service, as provided under Section 25-B of the Act and that the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she had worked for 240 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he/she had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of September, 1999. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

15. The petitioner's allegation that the respondents had violated the provisions of Section 25-G of the Act as well, to my mind, does not appear to have been substantiated. No doubt, the petitioner in paragraph 3 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Smt. Roshani Devi, Smt. Mamta Devi and Shri Inder Singh who were junior to her, were retained in service by the respondents, but such averment has remained a mere saying on record and has not been established. No seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondents/department. Even no ocular evidence has been led by the petitioner to substantiate her claim. The mere allegations made by the petitioner in the statement of claim that workers junior to her were retained cannot be taken as a gospel truth. The material on record, thus, being too scanty and nebulous to lend credence to her allegation that workers junior to her were retained after the termination of her services, the respondents cannot be said to have been proved to have violated the provisions of Section 25-G of the Act.

16. It was also claimed by the petitioner that new appointments had been made by the respondents. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, this issue is decided against the petitioner and in favour of the respondents.

ISSUE No. 2:

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

ISSUE No. 3:

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

RELIEF

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 501/2016

Date of Institution : 22-8-2016

Date of Decision : 16-01-2021

Shri Suresh Kumar s/o Shri Chaudhary Ram, r/o Village and Post Office Dhaneti Bhuriuan, Tehsil Nurpur, District Kangra, H.P.*Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Suresh Kumar s/o Shri Chaudhary Ram, r/o Village and Post Office Dhaneti Bhuriuan, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P. who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1980 in

HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1980 until the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by the Court *vide* order dated 31.7.2019:

1. Whether the termination of the services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified, as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable, as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches, as alleged? ...OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Negative
Issue No. 3	: Affirmative
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Suresh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondents. He denied that he was not engaged by the respondents due to which he had not completed 240 days in any calendar year. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he was never disengaged by the respondents/department.

11. PW2 Shri Tilak Raj was examined by the petitioner in support of his claim. He testified that he had worked as a beldar in HPPWD Division Nurpur and that the petitioner had also been working with him. He admitted in the cross-examination that record is maintained by the department of whosoever works in it.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18

Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. Further, he admitted that the work increases during the monsoons. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. He denied that wrong mandays of the petitioner has been given.

14. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of mandays chart pertaining to the petitioner.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

17. Ex. RW1/E is the copy of Notification dated 21.7.1991 with regard to shifting of HPPWD Division Jassur to Jawali.

18. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1980 and that he had worked as such until the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his substantive evidence denied the fact that he had never worked with the respondents, but, however, he had to admit at one point of his cross-examination that he has not placed on record any document evidencing that he had worked with the respondents. Then, respondent No. 1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/C. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1980 until the year 1990. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No. 1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No. 1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, Shri Tilak Raj (PW2) was examined by the petitioner to substantiate his case, claiming him to be a co-worker, but I find that his statement is of no help to him, as his service record was not brought on the file to show that he had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those ten years, the period for which he claims to have worked with respondent No. 1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1980 until the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents has been placed on record by him.

19. From the ocular and documentary evidence of the respondents available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

20. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

21. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

ISSUE NO. 3:

22. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

ISSUE NO. 4:

23. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

RELIEF

24. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL)

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 765/2016

Date of Institution : 19-11-2016

Date of Decision : 18-01-2021

Shri Kishori Lal s/o Shri Kanshi Ram, r/o Village and P.O. Jounta, Tehsil Kotla, Nurpur,
District Kangra, H.P.Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P.Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kishori Lal s/o Shri Kanshi Ram, r/o Village and P.O. Jounta, Tehsil Kotla, Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-received on 29.11.2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1982 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990. He had worked for 240 days in twelve calendar months from the date of his retrenchment. HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Sh. Krishan Lal, Pritam Chand and Roshan Lal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard

from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1982 until the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by the Court *vide* order dated 15.12.2018:

1. Whether termination of service of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? ...OPP
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2	: Negative
Issue No. 3	: Affirmative
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kishori Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW- (A)-A(1)17/94. He denied that he had never worked with the respondents. He denied that he was not engaged by the respondents due to which he had not completed 240 days in any calendar year. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he was never disengaged by the respondents/department.

11. PW2 Shri Tilak Raj was examined by the petitioner in support of his claim. He testified that he had worked as a beldar in HPPWD Division Nurpur and that the petitioner had also been working with him. He admitted in the cross-examination that record is maintained by the department of whosoever works in it.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. Further, he admitted that the work increases during the monsoons. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. He denied that wrong mandays of the petitioner has been given.

14. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of mandays chart pertaining to the petitioner.

16. Ex. RW1/D is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

17. Ex. RW1/E is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

18. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1982 and that he had worked as such until the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his substantive evidence denied the fact that he had never worked with the respondents, but, however, he had to admit at one point of his cross-examination that he has not placed on record any document evidencing that he had worked with the respondents. Then, respondent No. 1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/C. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 until the year 1990. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No. 1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No. 1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, Shri Tilak Raj (PW2) was examined by the petitioner to substantiate his case, claiming him to be a co-worker, but I find that his statement is of no help to him, as his service record was not brought on the file to show that he had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those eight years, the period for which he claims to have worked with respondent No. 1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1982 until the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents has been placed on record by him.

19. From the ocular and documentary evidence of the respondents available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

20. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

21. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless

claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

ISSUE NO.3:

22. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

ISSUE NO.4:

23. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

RELIEF

24. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 130/2019

Date of Institution : 15-11-2019

Date of Decision : 20-01-2021

Shri Sunil Kumar s/o Shri Daleep Singh, r/o VPO Sarahkar, Tehsil and District Hamirpur,
H.P.Petitioner.

Versus

M/s Kailash Print Media Pvt. Ltd., Village Sasan, P.O. Jhanyari, Tehsil & District
Hamirpur, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Aggarwal, AR

For the Respondent : Sh. Anand Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the claim of Sh. Sunil Kumar s/o Sh. Daleep Siingh, r/o VPO Sarahkar, Tehsil and District Hamirpur, H.P. for the recovery of the amount due to him on account of his pending wages for 4 months and 3 days amounting to Rs. 49,200/-, Gratuity amounting to Rs. 36,000/-, Earned Leave amounting to Rs. 36,000/-, Retrenchment Compensation amounting to Rs. 18,000/- and Notice Pay amounting to Rs. 12,000/- from M/s. Kailash Print Media Pvt. Ltd. having its office at Vill. Sasan P.O. Jhanyari Tehsil and Distt. Hamirpur, H.P. is justified? If yes, to what amount of pending wages, Gratuity, earned leave, retrenchment compensation and notice pay along with interest or compensation, he is entitled to?”

2. The case is listed for appearance of the petitioner but, however, Shri Ravinder Aggarwal, Authorized Representative for the petitioner has made the below given statement in the Court today:—

“Stated that I do not want to proceed further with this case. Hence, I withdraw the same.

RO&AC

PJ

Sd/-

Sd/-

3. In view of the above statement, this reference/claim petition is withdrawn as compromised. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2021.

Seal

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 868/2016

Date of Institution : 26-11-2016

Date of Decision : 20-01-2021

Shri Sham Lal s/o Shri Sadhu Ram, r/o V.P.O. Kopra, Tehsil Nurpur, District Kangra, H.P.
...Petitioner.

Versus

1. The Executive Engineer, HPPWD Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division Jawali, District Kangra, H.P. ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Sham Lal, s/o Sh. Sadhu Ram, r/o V.P.O. Kopra, Tehsil Nurpur, Distt. Kangra, H.P. by the (1) the Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year 1986 who had worked on daily wages basis as beldar and has raised his industrial dispute after about 24 years vide demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-06-2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1986 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such until the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors retained by the employer and also with the re-engaged employees as detailed in para no.3 of the petition. The mates of the petitioner were S/Shri Mohinder Singh, Joginder Singh, Jagdish and Harnam Singh etc. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner along-with some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter

referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. The contents of the petition were denied on merits. It is denied that the services of the petitioner had been engaged as a beldar in the year 1986 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* September, 1987 until December, 1987. He had not completed 240 days in any calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had re-engaged workers on 25.5.2010. Infact workers were re-engaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondents, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in December, 1987, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 31.7.2019:

1. Whether the termination of the services of the petitioner by the respondents during the year, 1986 is/was illegal and unjustified, as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable, as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and latches, as alleged? ...OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹15,000/-
Issue No. 3	: Negative
Issue No. 4	: Negative
Relief	: Petition is partly allowed awarding lump sum compensation of ₹15,000/- as per the operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sham Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

In the cross-examination, he admitted that he had started working as a beldar in HPPWD Division Nurpur in the year 1986. He further admitted that he had only worked for 83 days from September to December, 1986. He denied that thereafter he had never worked in the department in any year. Volunteered that, he possesses with him the record in this regard. He had to admit that he has not annexed such record with the petition. He specifically denied that from the year 1986 onwards he had never worked for 240 days in any year. He further denied that he had been leaving and coming to work at his own sweet will. Further, he denied that no juniors to him have been retained by the department. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he was never disengaged by the respondents/department.

11. PW2 Shri Tilak Raj was examined by the petitioner in support of his claim. He testified that he had worked as a beldar in HPPWD Division Nurpur and that the petitioner had also been working with him. He admitted in the cross-examination that record is maintained by the department of whosoever works in it.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that when workers were removed in the year 1990 from HPPWD Division, Nurpur, he was not working in any capacity in this Division. He also

admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. Further, he admitted the work increases during the monsoons. He specifically admitted that the workers named in para 3 of the claim petition and in para 2 of the affidavit of the petitioner are still working in HPPWD Division, Nurpur. He was not aware that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. He admitted that as per Ex.RW1/C the petitioner had worked for 83 days in the year 1986.

14. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of mandays chart pertaining to the petitioner.

16. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

17. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. As per the petitioner, his such services were engaged by the respondents in the year 1986. The respondents denied this fact and claimed that the petitioner had initially been engaged in September, 1987. However, this assertion of the respondents seems to be totally false and baseless, as the mandays chart Ex.RW1/C produced by respondent No.1 itself discloses that the services of the petitioner were initially engaged in the month of September, 1986 by the department. A further glance at this document would reveal that the petitioner had only worked as a daily wager for 83 days until December, 1986. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents until the year 1990. From the statement made by the petitioner (PW1), it can be gathered that he claimed to be in possession of the record to prove the same, but no such record has seen the light of the day. For withholding such record, this Court is justified in drawing an adverse inference against the petitioner that had the same been produced, it would not have established the case of the petitioner that he had worked in the department until the year 1990.

18. The claim of the petitioner is that his services were wrongly and illegally terminated by the respondents in the year 1990. While denying the said fact, the respondents have pleaded that the petitioner had left the job of his own free will and volition.

19. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

20. It is common knowledge that abandonment has to be proved like any other fact by the employer. In Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he had left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

21. From the mandays chart, copy which is exhibited as Ex. RW1/C on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment in the year 1986 (as per the reference), as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

23. It is claimed by the petitioner that after the termination of his services alongwith other workers, persons junior to him were re-engaged on 25.5.2010. A detail of such persons has been given in para 03 of the statement of claim by the petitioner. The petitioner while pledging his oath as PW1 has also specifically stated that after the termination of his services alongwith others, persons junior to him were re-engaged. He gave a detail of such juniors in para 03 of his affidavit Ex.PW1/A, being in the shape of his examination-in-chief. While going through the pleadings and the evidence of the petitioner available on the file, it appears that persons mentioned at serial nos. 1 to 6, 9 to 11 and 15, 17,18, 20 to 22 and 24 of the table given in the statement of claim were initially engaged after December, 1986. On taking me through the pleadings and the evidence of the respondents available on the file, the learned vice counsel for the petitioner/claimant argued that such fact has not been disputed by the respondents. There appears to be force in the aforesaid contention raised by the learned vice counsel for the petitioner. Nowhere either in the pleadings or in the evidence, the respondents have specifically disputed or denied the initial months/years of engagement of the said persons, whose details have been given in the statement of claim by the petitioner. It was vociferously argued by the learned Deputy District Attorney for the respondents that in the absence of any seniority list on the file, the petitioner cannot claim any protection under the provisions of the Act. This contention of the learned Deputy District Attorney does not hold good to me, as it is by now well settled that admission is the best piece of evidence and the facts admitted need not be proved. As already mentioned, the respondents have not disputed the initial years of engagements of the said persons anywhere in their pleadings or the evidence. Manifest that they admitted such pleaded fact and evidence of the petitioner on record. It is there in the statement of the respondent (RW1) that the workers mentioned in para No. 03 of the claim petition and in para 02 of the affidavit of the petitioner are serving HPPWD Division, Nurpur these days. Meaning thereby that such persons are still serving the respondents/department and their services were engaged after the engagement of the services of the petitioner. S/Shri Rai Singh, Karam Chand, Ram Lal, Joginder Singh, Karam Chand s/o Shri Jaisi Ram, Dulo Ram, Som Raj, Tilak Raj, Dev Raj, Gagan Singh, Dhian Chand, Niku Deen, Ramesh Chand and Sher Singh were engaged in the year 1987, while the month and year of engagement of Sh. Naresh Kumar is January, 1988. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/C is September, 1986. There is nothing on record to show that the above-named persons were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondents/department. The latter had failed to adhere to the principle of ‘last come first go’. Retaining the juniors at the cost of senior is nothing but ‘unfair labour practice’. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

24. Such being the situation, I have no hesitation to conclude that the respondents and in particular respondent No.1 has contravened the provisions of Section 25-G of the Act.

25. Faced with the situation, it was contended for the respondents that junior workers had been re-engaged in service as per the orders of the Court. There is no cogent and convincing evidence on the file to show that all the persons named in the statement of claim as well as in his

affidavit Ex.PW1/A by the petitioner were re-engaged as per the orders of the Court. No doubt, the petitioner in his cross-examination has not specifically denied but merely feigned ignorance to the fact that all the workers mentioned in para No. 03 of the statement of claim and para No. 2 of the rejoinder have been re-engaged as per the orders of the Court. However, even if for the sake of arguments it is presumed that the petitioner admits such fact, to my mind that would not defeat his claim that they were junior to him.

26. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.**

27. However, the petitioner's allegation that the respondents had violated the provisions of Sections 25-H and 25-N of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondents after his disengagement. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh workers were appointed after the termination of his services, the respondents cannot be said to have been proved to have violated the provisions of Section 25-H of the Act. Also, the allegation of violation of the provisions of Section 25-N of the Act cannot be said to have been established for want of plausible evidence.

28. The upshot is that in terminating the services of the petitioner, the respondents and in particular respondent No. 1 violated the provisions of Section 25-G of the Act. In other words, the termination of the services of the petitioner was unlawful.

29. The learned Deputy District Attorney for the respondents contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82,** wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

30. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

31. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC),** it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondents for 83 days as a non-skilled worker. His services, as per the reference were disengaged in the year 1986 and he had raised the industrial dispute by issuance of demand notice after more than twenty five years *i.e.* demand notice was given in the year 2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

32. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondents.

ISSUE NO. 3:

33. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

RELIEF

34. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of ₹15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are

left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2021.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील पुखरी, जिला चम्बा,
हिमाचल प्रदेश**

श्री निर्मल कुमार पुत्र श्री मोती राम, गांव पुछवाड़ा, डाकघर सिड कुंड, उप-तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश वादी।

बनाम

आम जनता एवं ग्राम पंचायत सिड कुण्ड, विकास खण्ड चम्बा प्रतिवादी।

विषय—मृत्यु प्रविष्ट करने बारा।

इस अदालत में उप-मण्डलाधिकारी (ना०), महोदय चम्बा के कार्यालय पृष्ठांकन संख्या 1659 / 2021 दिनांक 12-04-2021 के माध्यम से प्राप्त दस्तावेज क्रमशः 1. जिला पंजिकरण (जन्म एवं मृत्यु) मुख्य चिकित्सा अधिकारी चम्बा के कार्यालय पत्र संख्या HFW-B&D/CMO-CBA/2021/5557, दिनांक 31-03-2021, 2. शपथ—पत्र, 3. मृत्यु रिपोर्ट, 4. अप्राप्यता प्रमाण—पत्र, 5. आधार कार्ड, 6. रिपोर्ट प्रधान ग्राम पंचायत सिड, 7. शपथ—पत्र वांशिंदगान देह, जिसमें आवेदक निर्मल कुमार पुत्र श्री मोती राम, गांव पुछवाड़ा, डाकघर सिड कुंड, उप-तहसील पुखरी, जिला चम्बा (हि०प्र०) की बुआ की मृत्यु तिथि किन्ही कारणों से पंचायत अभिलेख में दर्ज करने से रह गई है। परिणामतयः पंचायत मृत्यु पंजीकरण रजिस्टर में आवेदक की बुआ का नाम मृत्यु तिथि दर्ज न हुआ है जो नियमानुसार अनिवार्य है। इस विषय की पुष्टि शपथ—पत्र व जारी मृत्यु रिपोर्ट जो जिला पंजिकरण जन्म एवं मृत्यु अधिकारी चम्बा ने अपने प्रमाण—पत्र जो दिनांक 31-03-2021 को जारी हुआ है उसमें की है।

अतः सर्वसाधारण को इस नोटिस के माध्यम से सूचित किया जाता है कि आवेदक की बुआ चिकणी देवी पत्नी श्री तेज राम, गांव सरभयाली, डाकघर सिड कुण्ड, उप-तहसील पुखरी, जिला चम्बा की मृत्यु तिथि 12-12-1992 जन्म एवं मृत्यु पंजिकरण अधिनियम, 1969 की धारा (13) 3 के प्रावधानों के अन्तर्गत पंचायत के सम्बन्धित अभिलेख अथवा जिला पंजिकरण (जन्म एवं मृत्यु) द्वारा अभिलेख में दर्ज करने के आदेश पारित किये जाने हैं। अगर किसी को किसी प्रकार की कोई आपत्ति हो तो वह इस अदालत में नोटिस (इश्तहार) के एक माह के भीतर सुबहः 10.00 से सायं 5.00 बजे तक अपनी आपत्ति दर्ज करवा सकता है। निर्धारित अवधि में आपत्ति न आने की सूरत में आवेदक की बुआ चिकणी देवी पत्नी श्री तेज राम, गांव सरभयाली, डाकघर सिड कुंड की मृत्यु तिथि सम्बन्धित अभिलेख में दर्ज करने के आदेश ग्राम पंचायत सचिव सिड कुंड को पारित कर दिए जाएंगे।

आज दिनांक 21-05-2021 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
उप-तहसील पुखरी, जिला चम्बा (हि० प्र०)।

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप—तहसील पुखरी, जिला चम्बा,
हिमाचल प्रदेश**

श्री बिशन दास पुत्र श्री हाको, गांव नन्दलेरा, डाकघर सिड कुंड, उप—तहसील पुखरी, जिला चम्बा, वादी।
हिमाचल प्रदेश

बनाम

आम जनता एवं ग्राम पंचायत सिड कुण्ड, विकास खण्ड चम्बा प्रतिवादी।

विषय.—मृत्यु प्रविष्ट करने बारा।

इस अदालत में उप—मण्डलाधिकारी (ना०), महोदय चम्बा के कार्यालय पृष्ठांकन संख्या 1749 / 2021 दिनांक 20—04—2021 के माध्यम से प्राप्त दस्तावेज क्रमशः 1. जिला पंजिकरण (जन्म एवं मृत्यु) मुख्य चिकित्सा अधिकारी चम्बा के कार्यालय पत्र संख्या HFW-B&D/CMO-CBA/2020/6044, दिनांक शून्य 2. शपथ—पत्र, 3. मृत्यु रिपोर्ट, 4. अप्राप्यता प्रमाण—पत्र, 5. आधार कार्ड, 6. रिपोर्ट उप—प्रधान ग्राम पंचायत सिड, 7. शपथ—पत्र वाशिंदगान देह, जिसमें आवेदक बिशन दास पुत्र श्री हाको, गांव नन्दलेरा, डाकघर सिड कुंड, उप—तहसील पुखरी, जिला चम्बा (हि०प्र०) की ताई की मृत्यु तिथि किन्हीं कारणों से पंचायत अभिलेख में दर्ज करने से रह गई है। परिणामतयः पंचायत मृत्यु पंजीकरण रजिस्टर में आवेदक की ताई का नाम मृत्यु तिथि दर्ज न हुआ है जो नियमानुसार अनिवार्य है। इस विषय की पुष्टि शपथ—पत्र व जारी मृत्यु रिपोर्ट जो जिला पंजिकरण जन्म एवं मृत्यु अधिकारी चम्बा ने अपने प्रमाण—पत्र संख्या 6044 में दर्शाया गया है।

अतः सर्वसाधारण को इस नोटिस के माध्यम से सूचित किया जाता है कि आवेदक की ताई श्रीमती रुमी पत्नी श्री देवण् गांव नन्दलेरा, डाकघर सिड कुण्ड, उप—तहसील पुखरी, जिला चम्बा की मृत्यु तिथि 17—12—1977 जन्म एवं मृत्यु पंजिकरण अधिनियम, 1969 की धारा (13) 3 के प्रावधानों के अन्तर्गत पंचायत के सम्बन्धित अभिलेख अथवा जिला पंजिकरण (जन्म एवं मृत्यु) द्वारा अभिलेख में दर्ज करने के आदेश पारित किये जाने हैं। अगर किसी को किसी प्रकार की कोई आपत्ती हो तो वह इस अदालत में नोटिस (इश्तहार) के एक माह के भीतर सुबहः 10.00 से सायं 5.00 बजे तक अपनी आपत्ती दर्ज करवा सकता है। निर्धारित अवधि में आपत्ती न आने की सूरत में आवेदक की ताई श्रीमती रुमी पत्नी श्री देवण् गांव नन्दलेरा, डाकघर सिड कुंड की मृत्यु तिथि सम्बन्धित अभिलेख में दर्ज करने के आदेश ग्राम पंचायत सचिव सिड कुंड को पारित कर दिए जाएंगे।

आज दिनांक 21—05—2021 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
उप—तहसील पुखरी, जिला चम्बा (हि० प्र०)।

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप—तहसील पुखरी, जिला चम्बा,
हिमाचल प्रदेश**

श्रीमती निचो पत्नी स्व० श्री दलीप सिंह, गांव सालूई, डाकघर सिड कुंड, उप—तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश वादी।

बनाम

आम जनता एवं ग्राम पंचायत सिड कुण्ड, विकास खण्ड चम्बा प्रतिवादी।

विषय.—मृत्यु प्रविष्ट करने बारा

इस अदालत में उप—मण्डलाधिकारी (ना०), महोदय चम्बा के कार्यालय पृष्ठांकन संख्या 1290 / 2021 दिनांक 22—03—2021 के माध्यम से प्राप्त दस्तावेज क्रमशः 1. जिला पंजिकरण (जन्म एवं मृत्यु) मुख्य चिकित्सा अधिकारी चम्बा के कार्यालय पत्र संख्या HFW-B&D/CMO-CBA/2020/4359, दिनांक शून्य, 2. शपथ—पत्र, 3. मृत्यु रिपोर्ट, 4. अप्राप्यता प्रमाण—पत्र, 5. आधार कार्ड, 6. शपथ—पत्र वाशिंदगान देह, जिसमें आवेदिका निचो पत्नी स्व० श्री दलीप सिंह, गांव सालूई, डाकघर सिढ कुण्ड, उप—तहसील पुखरी, जिला चम्बा (हि०प्र०) के पति की मृत्यु तिथि किन्हीं कारणों से पंचायत अभिलेख में दर्ज करने से रह गई है। परिणामतयः पंचायत मृत्यु पंजीकरण रजिस्टर में आवेदिका के पति का नाम मृत्यु तिथि दर्ज न हुआ है जो नियमानुसार अनिवार्य है। इस विषय की पुष्टि शपथ—पत्र व जारी मृत्यु रिपोर्ट जो जिला पंजिकरण जन्म एवं मृत्यु अधिकारी चम्बा ने अपने प्रमाण—पत्र संख्या 4359 में दर्शाया गया है।

अतः सर्वसाधारण को इस नोटिस के माध्यम से सूचित किया जाता है कि आवेदिका के पति स्व० श्री दलीप सिंह, गांव सालूई, डाकघर सिढ कुण्ड, उप—तहसील पुखरी, जिला चम्बा की मृत्यु तिथि 11—02—2003 जन्म एवं मृत्यु पंजिकरण अधिनियम, 1969 की धारा (13) 3 के प्रावधानों के अन्तर्गत पंचायत के सम्बन्धित अभिलेख अथवा जिला पंजिकरण (जन्म एवं मृत्यु) द्वारा अभिलेख में दर्ज करने के आदेश पारित किये जाने हैं। अगर किसी को किसी प्रकार की कोई आपत्ती हो तो वह इस अदालत में नोटिस (इश्तहार) के एक माह के भीतर सुबहः 10.00 से सायं 5.00 बजे तक अपनी आपत्ती दर्ज करवा सकता है। निर्धारित अवधि में आपत्ती न आने की सूरत में आवेदिका के पति स्व० श्री दलीप सिंह, गांव सालूई, डाकघर सिढ कुण्ड की मृत्यु तिथि सम्बन्धित अभिलेख में दर्ज करने के आदेश ग्राम पंचायत सचिव सिढ कुण्ड को पारित कर दिए जाएंगे।

आज दिनांक 21—05—2021 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
उप—तहसील पुखरी, जिला चम्बा (हि० प्र०)।

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप—तहसील पुखरी, जिला चम्बा,
हिमाचल प्रदेश**

श्री लोकिन्द्र सिंह पुत्र श्री दिवान सिंह, गांव ब्रेटका, डाकघर सन्धि, उप—तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश वादी।

बनाम

आम जनता एवं ग्राम पंचायत दुलाहर, विकास खण्ड चम्बा प्रतिवादी।

विषय.—जन्म प्रविष्ट करने बारा

इस अदालत में उप—मण्डलाधिकारी (ना०), महोदय चम्बा के कार्यालय पृष्ठांकन संख्या 1517 / 2021, दिनांक 07—04—2021 के माध्यम से प्राप्त दस्तावेज क्रमशः 1. जिला पंजिकरण (जन्म एवं मृत्यु) मुख्य चिकित्सा अधिकारी चम्बा के कार्यालय पत्र संख्या HFW-B&D/CMO-CBA/2020/5874, दिनांक 05—04—2021 2. शपथ—पत्र, 3. जन्म रिपोर्ट, 4. अप्राप्यता प्रमाण—पत्र, 5. आधार कार्ड, 6. परिवार नकल, 7. शपथ पत्र वाशिंदगान देह, 8. शिक्षा प्रमाण—पत्र जिसमें आवेदक लोकिन्द्र सिंह पुत्र श्री दिवान सिंह, गांव ब्रेटका, डाकघर सन्धि, उप—तहसील पुखरी, जिला चम्बा (हि०प्र०) के बच्चों की जन्म तिथि किन्हीं कारणों से पंचायत अभिलेख

में दर्ज करने से रह गई है। परिणामतयः पंचायत जन्म पंजीकरण रजिस्टर में आवेदक के बच्चों का नाम व जन्म तिथि दर्ज न हुआ है जो नियमानुसार अनिवार्य है। इस विषय की पुष्टि शपथ—पत्र व जारी जन्म रिपोर्ट जो जिला पंजिकरण जन्म एवं मृत्यु अधिकारी चम्बा ने अपने प्रमाण—पत्र संख्या 5874 दिनांक 05—04—2021 को जारी हुआ है उसमें की है।

अतः सर्वसाधारण को इस नोटिस के माध्यम से सूचित किया जाता है कि आवेदक की पुत्री सुहानी राणा पुत्री श्री लोकिन्द्र सिंह, गांव ब्रेटका, डाकघर सन्धि, उप—तहसील पुखरी, जिला चम्बा की जन्म तिथि 28—06—2009 व शिवांश राणा पुत्र श्री लोकिन्द्र सिंह, गांव ब्रेटका, डाकघर सन्धि, उप—तहसील पुखरी, जिला चम्बा की जन्म तिथि 14—12—2012 जन्म एवं मृत्यु पंजिकरण अधिनियम, 1969 की धारा (13) 3 के प्रावधानों के अन्तर्गत पंचायत के सम्बन्धित अभिलेख अथवा जिला पंजिकरण (जन्म एवं मृत्यु) द्वारा अभिलेख में दर्ज करने के आदेश पारित किये जाने हैं। अगर किसी को किसी प्रकार की कोई आपत्ति हो तो वह इस अदालत में नोटिस (इश्तहार) के एक माह के भीतर सुबहः 10.00 से सायं 5.00 बजे तक अपनी आपत्ति दर्ज करवा सकता है। निर्धारित अवधि में आपत्ति न आने की सूरत में आवेदक के बच्चों की जन्म तिथियाँ सम्बन्धित अभिलेख में दर्ज करने के आदेश ग्राम पंचायत सचिव दुलाहर को पारित कर दिए जाएंगे।

आज दिनांक 21—05—2021 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
उप—तहसील पुखरी, जिला चम्बा (हिं0 प्र0)।

INFORMATION & PUBLIC RELATIONS DEPARTMENT

NOTIFICATION

Shimla-2, the 21st June, 2021

No. Pub-B(2)-1/2014-II.—The Governor, Himachal Pradesh, on the recommendations of the Departmental Promotion Committee is pleased to promote Smt. Meena Bedi, Assistant Public Relations Officer, Class-II (Non-Gazetted) to the post of District Public Relations Officer/ Information Officer, Class-I (Gazetted), in the pay band of ₹10300—34800+5400 Grade Pay, in Information and Public Relations Department on regular basis with immediate effect.

2. The aforesaid Officer will be on probation for a period of two years in the first instance from the date of her joining. She shall also exercise option for fixation of pay under the provisions of FR-22, within a period of one month from the date of issue of these orders.

3. The posting orders of Smt. Meena Bedi, newly promoted DPRO/IO is being issued separately.

4. She is directed to submit her joining report to this office, through proper channel, immediately.

By order,

JAGDISH CHANDER SHARMA,
Additional Chief Secretary (I&PR).

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-02, the 19th June, 2021

No. UD-F(4)-1/2020.—In partial modification to this department notification of even number dated 18-05-2021, the Governor, Himachal Pradesh is pleased to notify that the sale deed for the acquisition of land for the proposed project of Bulk Water Supply for Shimla City from river Satluj will be executed in favour of Govt. of Himachal Pradesh, Department of Urban Development, as the owner / possessor.

By order,
Sd/-
RAJNEESH,
Principal Secretary (UD).

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi (H. P.)**

In the matter of:

1. Jashan Deep Singh s/o Sh. Davinder Pal Singh, r/o H.No. 362/13 Paddal Sauli Khad, Tehsil Sadar, District Mandi (H.P.).
2. Poonam Soni d/o Sh. Daljeet Singh Soni, r/o Ward No. 16 Goluwala Niwadian, 24 JRK, Hanumangarh, Goluwala, Rajasthan, Pin-335802

Versus

General Public

Subject.—Application for the registration of marriage under section 15 of Special Marriage Act, 1954.

Jashan Deep Singh s/o Sh. Davinder Pal Singh, r/o H.No. 262/13 Paddal Sauli Khad, Tehsil Sadar, District Mandi (H.P.) and Poonam Soni d/o Sh. Daljeet Singh Soni, r/o Ward No. 16 Goluwala Niwadan, 24 JRK, Hanumangarh, Goluwala, Rajasthan, Pin-335802 at present wife of Jashan Deep Singh s/o Sh. Davinder Pal Singh, r/o H.No. 362/13 Paddal Sauli Khad, Tehsil Sadar, District Mandi (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 30-04-2021 according to Hindu rites and customs at Namm Dhari Gurudwara Mandi, District Mandi (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 26-06-2021 after that no objection will be entertained and marriage will be registered.

Issued today on 20th day of May, 2021 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).*